

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

NICOLE MAEL, et al.,

Plaintiffs,

v.

EVANGER'S DOG AND CAT FOOD  
CO., INC., et al.,

Defendants.

CASE NO. C17-5469 RBL

ORDER DENYING MOTION TO  
DISMISS

THIS MATTER is before the Court on Defendant Evanger's Motion to Dismiss [Dkt. # 39] Plaintiff Mael's Second Amended Complaint [Dkt. #31]. The Court denied [Dkt. # 28] Evanger's prior motion to dismiss Mael's First Amended Complaint for failure to state a claim.

Evanger argues that Mael has failed to establish this Court's subject matter jurisdiction under the Magnusson Moss Warranty Act. It argues that, at 473 paragraphs, the Second Amended Complaint is too long to contain a "short and plain statement" of the claim, subjecting it to dismissal under Rule 41(b).

Mael argues that the Court has subject matter jurisdiction under the Magnusson Moss Warranty Act (as she pled in her first two complaints, as well) and that Evanger's waived the

1 bulk of their now-asserted Rule 12 defenses (and their motion to strike) by failing to assert them  
2 in the prior Motion to Dismiss.

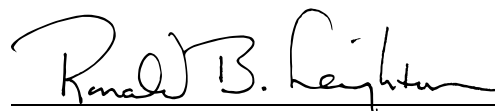
3 As an initial matter, the Court sort of anticipated that the new Motion would address the  
4 “new” portions of the SAC, not take a second run at dismissing claims and statements that were  
5 in the FAC. The Court already denied the Motion to Dismiss as to the prior complaint. It  
6 therefore agrees that most of the arguments in the current Motion were waived.

7 Alleged defects in the Court’s subject matter jurisdiction, of course, may be raised at any  
8 time. Evanger’s argues that Mael has not effectively triggered Magnuson Moss Warranty Act  
9 jurisdiction because she has not named 100 individual plaintiffs. But Mael points out that the  
10 Court has jurisdiction under CAFA, and cites a number of cases unremarkably holding that  
11 CAFA “effectively supersedes the MMWA’s more stringent jurisdictional requirements.” *See*  
12 *Kuns v. Ford Motor Co.*, 543 Fed. Appx. 572, 574 (6<sup>th</sup> Cir. 2013).

13 The Motion to Dismiss is DENIED.

14 IT IS SO ORDERED.

15 Dated this 17<sup>th</sup> day of August, 2018.

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18 Ronald B. Leighton  
19 United States District Judge  
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